



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2011-0826; FRL-9725-6]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Michigan; PSD and NSR Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving specified revisions to Michigan's State Implementation Plan (SIP) that EPA has determined are consistent with the Federal requirements of the prevention of significant deterioration (PSD) construction permit program for the purpose of meeting the requirements of the Clean Air Act (CAA) with regard to new source review (NSR) in Class I areas attaining the National Ambient Air Quality Standards.

**DATES:** This final rule is effective on [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0826. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the

Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Constantine Blathras, Environmental Engineer, at (312) 886-0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, [Blathras.Constantine@epa.gov](mailto:Blathras.Constantine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Action Is EPA Taking?

II. Statutory and Executive Order Reviews.

**I. What Action Is EPA Taking?**

EPA is approving Michigan's request to revise its SIP to add rule R. 336.2816 to be consistent with Federal PSD regulations in 40 CFR 51.166(p), that require state PSD programs

to have a mechanism in place to coordinate and consult with Federal land managers of Class I PSD areas. On January 9, 2008, EPA proposed to disapprove R. 336.2816 from Michigan's SIP submittal because it did not provide for such a mechanism. Michigan has now revised R. 336.2816 to be consistent with the Federal requirement.

On March 25, 2010, EPA published a direct final approval to convert a conditional approval of the Michigan PSD SIP to full approval under section 110 of the CAA. In that action, EPA stated that we would be taking a separate action on rule R. 336.2816(2) through (4), (requirements relating to Class I areas). Michigan has now revised R. 336.2816 to be consistent with the Federal requirement.

EPA is not acting on Michigan's request to revise its SIP by adding a significance level for particulate matter less than 2.5 microns (PM<sub>2.5</sub>). EPA has established a significance threshold to limit the applicability of PSD and NSR regulations to sources with emissions above the significance level. To be consistent with the Federal requirements, Michigan amended R. 336.2801 and R. 336.2901 to add the significance threshold for PM<sub>2.5</sub>. Because Michigan is planning to submit additional state rules as revisions to its SIP for precursors of PM<sub>2.5</sub>, EPA will defer action on this matter.

## II. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

In May 2011, EPA issued its policy on consultation and coordination with Indian tribes. EPA explained that its policy is to consult on a government to government basis with Federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Accordingly, EPA sent an invitation to consult with potentially interested tribes, and subsequently engaged in consultation with representatives of the Forest County Potawatomi Community (FCPC) regarding the Michigan proposed SIP revisions.

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 29, 2012

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52-- [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

2. In § 52.1170, the table in paragraph (c) entitled "EPA-- Approved Michigan Regulations" is amended by adding a new entry in numerical order for Part 18 to read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

EPA--Approved Michigan Regulations

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
Part 18. Prevention Of Significant Deterioration Of Air Quality				
* * * * *				
R 336.2816	Sources impacting federal class I areas; additional requirements.	June 30, 2011	<u>[insert date of publication in the Federal Register]</u> , [Insert page number where the document begins]	
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